

Cleanup Program Assessment Work Group

NACEPT Superfund Subcommittee
March 11-12, 2003
Phoenix, AZ



CPA Work Group Objective

- Develop options and recommendations around the future role of the NPL within the context of what other federal and non-federal cleanup programs currently provide – or could provide – in the universe of NPL-caliber cleanup actions



Key Areas Considered

- Other federal cleanup programs
- State cleanup programs
- Funding issues & efficiencies



Federal Programs

Federal Programs

- Looked at 10 programs, including CERCLA Removal and CERCLA Remedial for comparison purposes
 - Other programs include:
 - ☐ Brownfields
 - ☐ RCRA Subtitle C
 - ☐ RCRA Subtitle D
 - ☐ WRDA and other Corps
- HUD BEDI
SMCRA
CWA




Key Elements Considered

- General program description
- Types of sites reachable
- Cleanup standards
- Cost issues, including average cost of cleanup
- Ability to fund: cash on hand to pay for cleanup and ability to compel PRPs to pay
- Special features, pro and con



Key Observations

- Not about getting rid of CERCLA – about complementing it
- No program has funding to pay for cleanup of “a lot” of additional sites
- Not all about funding – programs also provide mechanisms, potential synergies and efficiencies
- Generally divide along three categories: prevention, funding, categorical (i.e., address specific type of site)



Recommendations – Federal Programs


1. Create a national committee to coordinate among cleanup programs and make sure all appropriate resources are brought to bear at NPL-caliber sites.
2. Increase community involvement across all cleanup programs

1. Coordinating Committee

- Purpose: Direct priority sites for remediation to appropriate federal and/or state cleanup program
- Members to include: Federal agencies and state/tribal officials
- Possible functions and approach:
 - Serve as entry for all NPL caliber sites
 - Determine appropriate cleanup program and funding
 - Track and measure performance
 - Provide transparent process w/public input

2. Community Involvement

- Improve and increase across all programs
 - Analysis of other federal programs demonstrated need to provide opportunity for public input and comment from interested parties
 - Could consider program specific improvements
- Could address for NPL-caliber sites through open, transparent process of proposed Coordinating Committee



Next Steps / Discussion

Federal Programs

- Does Subcommittee support carrying these observations on Federal programs forward in its report to EPA?
- What are views on the coordinating committee? How should this idea be carried forward?
- What additional analysis or evaluation on Federal programs are needed in real time to support NACEPT deliberations?
- What additional analysis or evaluation might be carried out longer-term?



State Programs

State Programs

■ Information sources:

- Environmental Law Institute 50-state study
- Analysis of state programs prepared by Chris Bryant, funded by GE, BP, WMS
- Analysis of state programs relative to TRI data prepared by Grant Cope
- Workgroup member papers on state programs and issues




Key Observations

- State cleanup programs are an important piece of the cleanup puzzle
- Effective state programs depend on effective Superfund program and vice versa – state programs won't replace the NPL; NPL won't replace state programs
- Range of cleanup approaches across the states and a range of capacities in state programs

State Program Issues

■ Four issues:


- Capacity to pay for fund-lead cleanups
- Capacity to oversee PRP-lead cleanups
- Potential for certain combinations of conditions to result in more sites being set forward for consideration for the NPL
- State innovations / good practices



Next Steps / Discussion

State Programs

- Does Subcommittee support carrying these observations on state programs forward in its report to EPA?
- Should there be further inquiry into state programs innovations / good practices? If yes, what should be the timing of this inquiry?
- What additional analysis or evaluation on state programs are needed in real-time to support Subcommittee deliberations? Longer-term?



Re-cap: State and Federal Programs

- Cleanup occurs under multiple state and federal programs – none are exactly like CERCLA
- Cooperation, coordination, and collaboration are important
- There may be innovative approaches and “best practice” elements that could be considered



Funding & Efficiencies



Funding Site Cleanups

- Two key opportunities:
 - Coordination / Integration / Deferral: Looking for cash in other agencies / programs and the states
 - Efficiency Analysis / Benchmarking: Looking for cash for cleanup within Superfund

Re-cap: Funding Issues

- Multiple possible sources of funding; however, few have “cash” for cleanup as other program priorities are being funded
- Generally, states lack resources to publicly fund “average” NPL cleanup (i.e., \$20 million)
- Restrictions and/or consequences associated with some other programs (e.g., not available for NPL sites, affect NRD recovery efforts)
- Some members question effectiveness of other programs for site cleanup; others find such programs innovative and effective

Other Ways to Increase Funds

- More PRP-lead cleanups – to the extent responsible parties are able but unwilling to pay their fair share
- Fund Superfund at previously authorized levels
 - \$1.5 billion annually
 - President's '04 budget requests an additional \$150 million for Superfund cleanups

What Next?

- Option 1: Nothing. Stop.
- Option 2: In-depth analysis of other program funding and potential utility of other program (as is or modified) for NPL-caliber cleanups
- Option 3: Benchmarking / Efficiencies Analysis
 - Look to redirect more Superfund dollars from non site specific activities to sites
 - Cost / benefit analysis of particular remedy action not suggested or implied as part of this presentation
 - Focus: achieving program goals for less (e.g., more efficiently)



Next Steps / Discussion

Funding & Efficiencies

- Does Subcommittee support moving forward with further analysis and evaluation around options 2 or 3?
- What additional analysis or evaluation on funding and efficiencies are needed in real time to support NACEPT deliberations?
- What additional analysis or evaluation might be carried out longer-term?



Additional Information

Slides from packet

Dividing up Federal Programs

Three categories:

1. *Prevention programs* – keep sites from needing cleanup and conduct cleanup without needing to resort to the NPL
2. *Some funding programs* – provide small amounts of funding for non-NPL sites
3. *Categorical programs* – able to address specific category of sites (e.g., mining, sediments), more potential but more complicated

Prevention Programs

- Two, implemented by authorized states:
 - RCRA Subtitle C (hazardous waste)
 - RCRA Subtitle D (municipal solid waste)
- Focus on making the prevention work better:
 - Expand to cover wastes / activities currently exempt (e.g., mining, cement kiln, fossil fuel combustions waste / industrial D wastes, recycling facilities)
 - Increase enforcement of financial assurance obligations and/or expand requirements
- Also have cleanup authorities



Programs with Some Cash

- Two evaluated, neither can be used at sites on the NPL
 - Brownfields
 - HUD Programs
- Money provided for specific focus:
 - Brownfields provides seed money for cleanup and re-development of smaller, less contaminated sites
 - HUD provides grant money primarily for urban re development, leverages federal investment at local level
- Other programs may also have cash (DOD site restoration)

Categorical Programs

- Three looked at:
 - Army Corps including WRDA
 - Surface Mining Control & Reclamation Act or SMCRA
 - Clean Water Act Programs

WRDA and Army Corps

- Contaminated sediments through navigation and dredging
- Great Lakes Program is established cleanup program
- Urban Rivers Initiative: pilot program between USACE and EPA to restore degraded urban rivers, including CERCLA caliber projects
- Potential benefits include:
 - Leveraging of both funds and human resources
 - Provides means to address orphan sites
- Potential barriers include:
 - Funds appropriated on site-specific basis; need local sponsor
 - Complexity of projects can inhibit cleanup

SMCRA

- Active and abandoned coal mines; some ability to address hard rock mines
- Tax on coal production-- not fully appropriated
- Potential benefits include:
 - Has money, if the money can be accessed, and may get more
 - Consolidation of mine sites under one program
- Potential barriers include:
 - Questions about cleanup standards and public involvement
 - Currently doesn't have ability to compel past owners/operators to contribute to cleanup



Clean Water Act Programs

- Three specific features:
 - Clean Water State Revolving Loan Fund
 - TMDL Program
 - CWA jurisdiction over sediment cleanup
- Potential benefits include:
 - Large amount of funding available through CWSRF
 - Provides prevention aspects at watershed-level
 - Can tie penalty money to cleanup through SEPS
- Potential barriers include:
 - Does not share CERCLA liability scheme
 - Permits are limited in what can be addressed

Coordinating Committee (cont'd)

■ Functions and possible approach

- ☐ Serve as “front door” through which all NPL and other sites pass
- ☐ Consider range of authorities to determine appropriate cleanup program
- ☐ Provide transparent process/public input
- ☐ Coordinate multiple programs/funding sources
- ☐ Track and measure performance

Paying for Cleanup

- Does not have to be NPL caliber to pay
- Some states have multiple sources of funding
- States can and do pay for cleanups at smaller low risk cleanups; however,
- State programs won't provide significant source of funds to pay for big cleanups – no state has cash to pay for multiple NPL caliber orphan sites
- In general, in 2003, 2004 state resources are decreasing
- State decisions about funding may be influenced by local concerns

Overseeing Cleanups

- States overseeing many PRP lead cleanups, most state overseen cleanups are PRP lead
- Laws and oversight approaches vary greatly
- Workgroup did not see its role as evaluating:
 - scope of state legal authorities
 - quality, efficiency of oversight
 - complexity of cleanups
 - cleanup costs
- (And did not evaluate)

Sending More Sites Forward

- Certain situations may create potential to send more sites to the NPL in the future, including
 - Historically list lots of sites
 - Not big listers but that may have sites unaddressed
 - Not using prevention or enforcement authorities effectively
 - Lack mature or effective cleanup program(s)
- Did not see task as evaluating whether these situations are occurring now or likelihood they may occur in the future (and did not evaluate)



Innovations / Good Practices

- States develop state specific approaches / innovations
- Some of these have the potential to be good practices and may be transferable or otherwise relevant to other programs
- Subcommittee should recommend an independent study to identify and evaluate state innovations and potential good practices.
- Evaluation should look at:
 - Strengths & weaknesses of approaches
 - Potential transferability

Examples to Consider

- Long- term stewardship and institutional control databases
- Elimination of the petroleum exclusion
- Site specific community involvement plans
- Triggering site assessment or cleanup upon property transfer
- Third- party certification for cleanup oversight
- Streamlined approval processes
- Cross program coordination approaches

Examples (cont'd)

- Tiered approach for selecting cleanup goals
- Tiered approaches to public participation
- Ground water management zones
- Conceptual site models
- Pay for performance
- Closed landfill program (Minnesota)
- O & M Monitoring approaches (Wisconsin)

Re-cap (cont'd)

- Use restrictions / consequences on other monies include:
 - Some cannot be used on NPL sites
 - Could affect NRD recovery efforts
 - Source of funding could cause tax "burden" shift
 - Other programs may already be overburdened
 - Some members believe use of other programs could trigger CERCLA provisions limiting recovery /contribution efforts



Option 1 – Do Nothing

Option 2 – Look At Other Programs

- Further in-depth analysis of funding authorities, expenditures and actual reserves in other programs
 - SMCRA
 - Ongoing action on the Hill to get fully appropriated, if potential to use “new funds” for cleanup of sites (competing priorities)
 - Concerns about cleanup standards, liability, public involvement
 - WRDA & Army Corps
 - Potential to leverage ongoing, funded dredging activities
 - Potential for special appropriates for specific projects – can be large sums, but need local sponsor and Congressional sponsor
 - Clean Water Act
 - Can bring money forward in two ways – through SEPs to settle penalties for violations of CW permits and through special appropriates under Section 115 (seldom used to date)

Option 2 – Other Programs (cont'd)

- Analysis of “barriers” to use of funds on NPL sites to determine action / options for barrier removal
- Related tools / action analysis
 - Additional appropriations
 - Fully funding current appropriations
 - Budget stabilization / risk capitalization devices (insurance)
- Assessment of “cost” to access the other programs and actual benefits.
- Would require greater detailed analysis of class / type of site on the list and screening for other program qualifications

Option 3 – Get more out of Superfund, Efficiencies

- Looking to redirect more Superfund dollars from non site specific activities to sites.
- Two types of analyses:
 - Qualitative / Programmatic
 - Quantitative

Qualitative / Programmatic

- Evaluate use of “Best practices” in the Superfund program
- Compare Superfund program structure to those practices of other agencies and private sectors
- Need to determine what portions of the programs are analogous to others to set “benchmark”
- Suggested items for review:
 - Project management structures (set up; periodic review; etc)
 - Use of requests for information to refine solicitations
 - Use of guaranteed fixed price contracting vehicles (insurance or guarantees)
 - (Review of ultimate costs of each remedy option is suggested by a member as a subset of this recommendation)

Quantitative

- Use expenditures data to identify opportunities for improvement
- Attempt to identify “unit price” analogues
- Compare rate of remediation by cost type to other programs, with “allowances” for additional costs inherent in community outreach and other CERCLA unique requirements
- Comparisons could be to other federal, state or private sector programs
 - Would require lots of additional cost data from the agencies

Quantitative –

Where Does the Money Go Now?

- Superfund appropriations have been \$1.27B a year for the past few years
- Approximately 55% goes to “cleanup”
 - \$648M to Superfund Regional Response activities such as: removals, sites studies and remedy design, implementation of cleanup, EPA staff time and travel, and lab support
 - \$64M to site specific enforcement activities.

Where Does the Money Go Now (cont'd)

- The remaining \$560M is distributed as follows:
 - \$292M to regional activities not charged to specific sites
 - \$163M to Headquarters related “response” activities
 - \$76M to management and support activities NOT in OSWER
 - \$20M to enforcement activities not charged to specific sites
- In addition to the \$1.27B
 - \$37M goes to ORD and
 - \$12M goes to OIG

Quantitative – Getting More Cleanup for the Money

- Evaluate the \$560 million – can more funds be directed to physical cleanup?
- Three key questions:
 - How much of all Superfund dollars are going to site-specific activities (vs. non-site specific activities?)
 - Are there efficiencies to be gained in either or both category that would result in more dollars going to cleanup?
 - What kinds of activities are being conducted by “other” (non-OSWER) offices that are being paid for with Superfund dollars?

Information Needed from EPA

- For each EPA Office:
 - Total number of staff (“FTE or full-time equivalents)
 - Total dollars (inc. cost of staff) separated into:
 - Extramural dollars (dollars going outside of EPA to contractors, states and tribes)
 - Intramural dollars (dollars going to cover staff payroll and benefits, rent, etc.)
- For intramural and extramural dollars separate into dollars going to site specific activities and dollars going to non site-specific activities

Information Needed (cont'd)

- For site specific activities separate into dollars going to physical cleanup and dollars going to study, oversight, monitoring and review
- EPA offices include:
 - OSWER, OA, OAR, OARM, OIG, OGC, OPEI, OW, OCFO
 - All regional offices
 - EPA Laboratories
 - EPA Headquarters



Additional Information

EPA Acronyms



Acronyms for EPA Offices

- OA – Office of the Administrator
- OARM – Office of Administration and Resource Management
- OAR – Office of Air and Radiation
- OCFO – Office of the Chief Financial Officer
- OECA – Office of Environment and Compliance Assurance
- OEI – Office of Environmental Information
- OGC – Office of General Counsel
- OIG – Office of the Inspector General
- ORD – Office of Research and Development
- OPEI – Office of Policy, Economics and Innovation
- OSWER – Office of Solid Waste and Emergency Response
- OW – Office of Water